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Senate Bill_____
By
_____

House No. HB0910
By Arriola, Jr.

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 6, relative to managed health care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 6 is amended by adding Sections 2 through 27 of this act as a new, appropriately designated part.

SECTION 2. As used in this part unless the context otherwise requires:

(1) "Commissioner" means the commissioner of the Tennessee department of health.

(2) "Health care contractor" means any entity or organization contracting, or otherwise agreeing, to provide, or cause to be provided, health care services or products to residents of the state of Tennessee pursuant to the terms of a managed health care plan, which, directly or indirectly, is either developed, promoted, sponsored, managed, or controlled by a health care facility, or affiliate thereof, including, but not limited to, managed health care plans, which, directly or indirectly, are either developed, promoted, sponsored, managed, or controlled by a health

care facility, or affiliate thereof, either as preferred provider organization plans, exclusive provider organization plans, or health maintenance organization plans.

(3) "Health care facility" means any profit or non-profit hospital as defined in §68-11-201, which provides, to the general public, health care services or products in the state of Tennessee to patients, on either an in-patient or out-patient basis or both.

(4) "Managed health care network" means the health care facility, or facilities, the selected providers, and other non-physicians who have been selected or designated by the health care contractor as participants to provide health care services or products pursuant to the managed health care plan of the health care contractor.

(5) "Managed health care plan" means any health care plan sponsored or promoted by a health care contractor.

(6) "Non-metropolitan area" means an area in the state of Tennessee no part of which is within an area designated as a standard metropolitan area by the United States Office of Management and Budget and which does not contain a Tennessee city whose population exceeds fifty thousand (50,000) according to the most recent federal census of population.

(7) "Physician" means a person who is either a doctor of medicine that is duly licensed to practice the profession in the state of Tennessee or a doctor of osteopathy that is duly licensed to practice the profession in the state of Tennessee.

(8) "Provider" means any physician, or a partnership of physicians, or a professional corporation created under the laws of the state of Tennessee whose stock is owned by physicians, who desire to provide health services or products to patient beneficiaries of a managed health care plan.

(9) "Selected provider" means any physician, or partnership of physicians, or a professional corporation created under the laws of the state of Tennessee whose

stock is owned by physicians, who have been designated, or selected, by the health care contractor to provide health care services or products pursuant to the managed health care plan.

SECTION 3. Every health care contractor shall establish and utilize physician-developed objective criteria that are based on professional qualifications, competence, and quality of care in the selection or designation of selected providers for the managed health care plan.

SECTION 4. The level of staff privileges at a health care facility shall not be utilized by a health care contractor as a criterion in selecting or designating selected providers for the managed health care plan.

SECTION 5. The number of patients admitted or referred by a provider to a health care facility shall not be utilized by a health care contractor as a criterion in selecting or designating selected providers for the managed health care plan.

SECTION 6. No health care contractor shall require, as a condition to a provider's applying for or being selected or designated as a selected provider of a managed health care plan, that the selected provider refer any of the selected provider's patients, who are not beneficiaries of the managed health care plan, to other participants in the managed health care network.

SECTION 7. No health care contractor shall require, as a condition to a provider's being selected or designated as a selected provider of a managed health care plan, that the physician, or physician members of a physician partnership, or physician owners of a professional corporation, be credentialed by, or have staff privileges, at the health care facility, or facilities, that are part of the managed health care network if none of the health care services or products to be furnished by the provider require that the provider use facilities at a health care facility.

SECTION 8. A health care contractor, contracting, or otherwise agreeing, to provide, or cause to be provided, health care services or products pursuant to a managed health

care plan limited to only residents of a non-metropolitan area, may apply to the commissioner for exclusion from the provisions of this part. The commissioner, without a public hearing, may exclude a health care contractor from complying with the provisions of this part but only to the extent that the managed health care plan is limited to only residents of a non-metropolitan area.

SECTION 9. Upon the approval of the commissioner of the health care contractor's application for exclusion from the provisions of this part, the provisions hereof shall not apply to the health care contractor if the managed health care plan applies to only residents of a non-metropolitan area.

SECTION 10. A health care contractor may apply to the commissioner for approval, in the selection or designation of selected providers, of criteria based on the number, geographic distribution, and specialties needed to provide health care services or products to be provided in a geographical area by the health care contractor pursuant to the managed health care plan.

SECTION 11. Except as provided in Section 8 of this part, the hearings by the commissioner, on the application of any health care contractor seeking approval of criteria, to be used by the health care contractor in selecting or designating selected providers, based on the number, geographic distribution, and specialties needed to provide the health care services or products to be provided in the geographical area by the health care contractor pursuant to the managed health care plan, shall be open to the public and conducted by the commissioner in accordance with the provisions of the uniform administrative procedures act, Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 12. In addition to the use of physician-developed objective criteria based on professional qualifications, competence, and quality of care in the selection or designation of selected providers for the managed health care plan, the health care contractor may also use criteria, based on the number, geographic distribution, and specialties needed to provide the health care services or products pursuant to the managed

health care plan, which have been approved by the commissioner in the selection or designation of selected providers for the managed health care plan.

SECTION 13. Physicians shall have the right to apply for participation as selected providers of any managed health care plan being developed, promoted, sponsored, managed, or controlled by a health care facility.

SECTION 14. Prior to selecting or designating a panel of selected providers for a managed health care plan, every health care contractor shall provide public notice to physicians within the geographic area of the state of Tennessee in which the health care contractor intends to provide health care services or products pursuant to a managed health care plan. In the notice the health care contractor shall notify physicians in the geographic area that it is seeking applications for providers of health care services or products under the managed health care plan of the health care contractor.

SECTION l5. Health care contractors shall disclose to physicians applying for designation as providers for the managed health care plan of the criteria to be used to select, retain, or exclude a physician from the managed health care plan, including any criteria approved by the commissioner to determine the number, geographic distribution, and specialties of physicians needed to provide the health care services or products pursuant to the managed health care plan.

SECTION l6. Subject to any criteria approved by the commissioner and objectively applied as to all applicants by the health care contractor, relative to the number, geographic distribution, and specialties of physicians needed to provide the health care services or products to be provided by the health care contractor pursuant to the managed health care plan, any provider who meets the physician-developed objective criteria and who is willing to abide by the terms and provisions of the managed health care plan, including the providing of health care services or products at a rate or price equal to the rate or price for such health care services or products established in the managed health care plan, shall be entitled to participate as a selected provider in the health care contractor's managed health care plan.

SECTION 17. Every managed health care plan shall provide defined due process appeal rights to providers before any provider is denied the right by any health care contractor to participate in the managed health care plan as a selected provider.

SECTION 18. No health care contractor shall terminate, or threaten to terminate, a selected provider of a managed health care plan, because the selected provider, at a managed health care plan patient beneficiary's request, referred the patient beneficiary to a provider of health care services or products who is not a participant in the managed health care network.

SECTION 19. No health care contractor shall terminate, or threaten to terminate, a selected provider of a managed health care plan, because the selected provider, in his or her best professional judgment, determined that no member of the managed health care network has the capability to deliver the health care services or products needed by the managed health care plan patient beneficiary, and as a result the selected provider elected to refer the patient beneficiary to a provider, who was qualified, in the best professional judgment of the selected provider, to deliver the needed health care services or products, but was not a member of the managed health care network.

SECTION 20. The managed health care plan cannot provide for benefit payments to selected providers in the managed health care network in amounts that exceed twenty percent (20%) of the benefit payments to be paid pursuant to the managed health care plan to physicians who are not participants in the managed health care network for similar type health care services or products.

SECTION 21. Prior to any selected provider being terminated as a selected provider for a managed health care plan, or the selected provider's rights as a selected provider being not renewed by a health care contractor, the selected provider shall be given notice by the health care contractor specifying the grounds for termination or nonrenewal, a defined due process for appeal, and an opportunity to initiate and complete remedial activities except in cases where harm to patients is imminent or an action by the Tennessee board of

medical examiners, or other Tennessee agency, effectively limits the physician's ability to practice his or her designated medical specialty.

SECTION 22. The provisions of this part shall not apply to:

(1) A managed health care plan either developed, promoted, sponsored, managed, or controlled by a health care facility that is owned and operated by the federal government, the state of Tennessee or any county or municipality in the state, or by any agency, authority, or institution created either by the federal government or the state of Tennessee or any county or municipality in the state; or

(2) A managed health care plan either developed, promoted, sponsored, managed, or controlled by a health care facility specifically for enrollees in the TennCare program; or

(3) A managed health care plan whose regulation by the state of Tennessee is preempted by the Employment Retirement Security Act of 1974 (ERISA), 29 U.S.C.§ 1001 to § 1461.

(4) A managed health care plan developed, promoted, sponsored, managed, or controlled by a corporation operated pursuant to Tennessee Code Annotated, Title 56, Chapter 29.

SECTION 23. Nothing contained in this part shall be construed to require the participation of a provider, or the continued participation as a selected provider, in a managed health care plan if the managed health care plan is either developed, promoted, sponsored, managed, or controlled by a health care contractor that is a federally qualified health maintenance organization and the participation of the provider, or selected provider, or providers would prevent the health care contractor from operating as a health maintenance organization in accordance with 42 U.S.C. § 300(e).

SECTION 24. Any person, firm, corporation or association who shall be injured in such person's or its business or property because of a violation of any provision of this part

shall recover threefold the damages sustained, and the cost of suit, including reasonable attorney fees.

SECTION 25. Any person, firm, corporation or association shall be entitled to sue for injunctive relief, in any court in the state of Tennessee having jurisdiction over the parties, against threatened loss or damage by a violation of any provision of this part, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by the courts of the state of Tennessee.

SECTION 26. A violation of the provisions of this part is a Class A misdemeanor.

SECTION 27. If any provision of this part is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this part, and to this end the provisions of this part are severable, except that if any provision of Section 22 or the application thereof to any person or circumstances is held invalid, such provision shall not be severable from this part and the whole of this part shall fail and be inoperative.

SECTION 28. This act shall take effect upon becoming a law, the public welfare requiring it.

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